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10/555,286	10/17/2006	Juan Miguel Jimenez Mayorga	09605.0016	9323

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EXAMINER
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LOEWE, SUN JAE Y

ART UNIT	PAPER NUMBER
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1622

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10/11/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/555,286	<b>Applicant(s)</b> JIMENEZ MAYORGA ET AL.	
	<b>Examiner</b> SUN JAE LOEWE	<b>Art Unit</b> 1622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 9-30-2011 BPAI decision.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 5) ☒ Claim(s) 1-15 and 20-25 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☒ Claim(s) 1-15 and 20-25 are subject to restriction and/or election requirement.

### Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                          |

### DETAILED ACTION

The elected species is maintained. The claims are further restricted as denoted below.

#### *Election/Restrictions*

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-10, 20 and 21, drawn to products wherein

R1 and R2 are each independently chosen from hydrogen atoms, and alkyl,

alkenyl, alkynyl, cycloalkyl, cycloalkylalkyl, cycloalkylalkenyl,

cycloalkylalkynyl, cycloalkenyl, cycloalkenylalkyl, cycloalkenylalkenyl,

cycloalkenylalkynyl, heterocyclyl, heterocyclylalkyl, heterocyclylalkenyl,

heterocyclylalkynyl, aryl, arylalkyl, arylalkenyl, arylalkynyl, heteroaryl,

heteroarylalkyl, heteroarylalkenyl, and heteroarylalkynyl groups;

.., R5 is aryl,

L is bond.

Group II, claim(s) 1-10, 20 and 21, drawn to products wherein

R1 and R2 are each independently chosen from hydrogen atoms, and alkyl,

alkenyl, alkynyl, cycloalkyl, cycloalkylalkyl, cycloalkylalkenyl,

cycloalkylalkynyl, cycloalkenyl, cycloalkenylalkyl, cycloalkenylalkenyl,

cycloalkenylalkynyl, heterocyclyl, heterocyclylalkyl, heterocyclylalkenyl,

heterocyclylalkynyl, aryl, arylalkyl, arylalkenyl, arylalkynyl, heteroaryl,

heteroarylalkyl, heteroarylalkenyl, and heteroarylalkynyl groups;

.., R5 is aryl,

L is NRc.

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Group III, claim(s) 1-10, 20 and 21, drawn to products wherein

R1 and R2 are each independently chosen from hydrogen atoms, and alkyl,

alkenyl, alkynyl, cycloalkyl, cycloalkylalkyl, cycloalkylalkenyl,

cycloalkylalkynyl, cycloalkenyl, cycloalkenylalkyl, cycloalkenylalkenyl,

cycloalkenylalkynyl, heterocyclyl, heterocyclylalkyl, heterocyclylalkenyl,

heterocyclylalkynyl, aryl, arylalkyl, arylalkenyl, arylalkynyl, heteroaryl,

heteroarylalkyl, heteroarylalkenyl, and heteroarylalkynyl groups;

., R5 is aryl,

L is O.

Group IV, claim(s) 1-10, 20 and 21, drawn to products wherein

R1 and R2 are each independently chosen from hydrogen atoms, and alkyl,

alkenyl, alkynyl, cycloalkyl, cycloalkylalkyl, cycloalkylalkenyl,

cycloalkylalkynyl, cycloalkenyl, cycloalkenylalkyl, cycloalkenylalkenyl,

cycloalkenylalkynyl, heterocyclyl, heterocyclylalkyl, heterocyclylalkenyl,

heterocyclylalkynyl, aryl, arylalkyl, arylalkenyl, arylalkynyl, heteroaryl,

heteroarylalkyl, heteroarylalkenyl, and heteroarylalkynyl groups;

., R5 is aryl,

L is NRcCO.

Group V, claim(s) 1-10, 20 and 21, drawn to products wherein

R1 and R2 are each independently chosen from hydrogen atoms, and alkyl,

alkenyl, alkynyl, cycloalkyl, cycloalkylalkyl, cycloalkylalkenyl,

cycloalkylalkynyl, cycloalkenyl, cycloalkenylalkyl, cycloalkenylalkenyl,

cycloalkenylalkynyl, heterocyclyl, heterocyclylalkyl, heterocyclylalkenyl,

heterocyclylalkynyl, aryl, arylalkyl, arylalkenyl, arylalkynyl, heteroaryl,

heteroarylalkyl, heteroarylalkenyl, and heteroarylalkynyl groups;

., R5 is aryl,

L is CONRc.

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Group VI, claim(s) 1-10, 20 and 21, drawn to products wherein

R1 and R2 are each independently chosen from hydrogen atoms, and alkyl,

alkenyl, alkynyl, cycloalkyl, cycloalkylalkyl, cycloalkylalkenyl,

cycloalkylalkynyl, cycloalkenyl, cycloalkenylalkyl, cycloalkenylalkenyl,

cycloalkenylalkynyl, heterocyclyl, heterocyclylalkyl, heterocyclylalkenyl,

heterocyclylalkynyl, aryl, arylalkyl, arylalkenyl, arylalkynyl, heteroaryl,

heteroarylalkyl, heteroarylalkenyl, and heteroarylalkynyl groups;

., R5 is aryl,

L is OCONRc.

Group VII, claim(s) 1-10, 20 and 21, drawn to products wherein

R1 and R2 are each independently chosen from hydrogen atoms, and alkyl,

alkenyl, alkynyl, cycloalkyl, cycloalkylalkyl, cycloalkylalkenyl,

cycloalkylalkynyl, cycloalkenyl, cycloalkenylalkyl, cycloalkenylalkenyl,

cycloalkenylalkynyl, heterocyclyl, heterocyclylalkyl, heterocyclylalkenyl,

heterocyclylalkynyl, aryl, arylalkyl, arylalkenyl, arylalkynyl, heteroaryl,

heteroarylalkyl, heteroarylalkenyl, and heteroarylalkynyl groups;

., R5 is aryl,

L is NRcCOO.

Group VIII, claim(s) 1-10, 20 and 21, drawn to products wherein

R1 and R2 are each independently chosen from hydrogen atoms, and alkyl,

alkenyl, alkynyl, cycloalkyl, cycloalkylalkyl, cycloalkylalkenyl,

cycloalkylalkynyl, cycloalkenyl, cycloalkenylalkyl, cycloalkenylalkenyl,

cycloalkenylalkynyl, heterocyclyl, heterocyclylalkyl, heterocyclylalkenyl,

heterocyclylalkynyl, aryl, arylalkyl, arylalkenyl, arylalkynyl, heteroaryl,

heteroarylalkyl, heteroarylalkenyl, and heteroarylalkynyl groups;

., R5 is

heteroaryl, L is bond.

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Group IX, claim(s) 1-10, 20 and 21, drawn to products wherein

R1 and R2 are each independently chosen from hydrogen atoms, and alkyl,

alkenyl, alkynyl, cycloalkyl, cycloalkylalkyl, cycloalkylalkenyl,

cycloalkylalkynyl, cycloalkenyl, cycloalkenylalkyl, cycloalkenylalkenyl,

cycloalkenylalkynyl, heterocyclyl, heterocyclylalkyl, heterocyclylalkenyl,

heterocyclylalkynyl, aryl, arylalkyl, arylalkenyl, arylalkynyl, heteroaryl,

heteroarylalkyl, heteroarylalkenyl, and heteroarylalkynyl groups;

., R5 is

heteroaryl, L is NRc.

Group XI, claim(s) 1-10, 20 and 21, drawn to products wherein

R1 and R2 are each independently chosen from hydrogen atoms, and alkyl,

alkenyl, alkynyl, cycloalkyl, cycloalkylalkyl, cycloalkylalkenyl,

cycloalkylalkynyl, cycloalkenyl, cycloalkenylalkyl, cycloalkenylalkenyl,

cycloalkenylalkynyl, heterocyclyl, heterocyclylalkyl, heterocyclylalkenyl,

heterocyclylalkynyl, aryl, arylalkyl, arylalkenyl, arylalkynyl, heteroaryl,

heteroarylalkyl, heteroarylalkenyl, and heteroarylalkynyl groups;

., R5 is

heteroaryl, L is O.

Group XI, claim(s) 1-10, 20 and 21, drawn to products wherein

R1 and R2 are each independently chosen from hydrogen atoms, and alkyl,

alkenyl, alkynyl, cycloalkyl, cycloalkylalkyl, cycloalkylalkenyl,

cycloalkylalkynyl, cycloalkenyl, cycloalkenylalkyl, cycloalkenylalkenyl,

cycloalkenylalkynyl, heterocyclyl, heterocyclylalkyl, heterocyclylalkenyl,

heterocyclylalkynyl, aryl, arylalkyl, arylalkenyl, arylalkynyl, heteroaryl,

heteroarylalkyl, heteroarylalkenyl, and heteroarylalkynyl groups;

., R5 is

heteroaryl, L is NRcCO.

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Group XII, claim(s) 1-10, 20 and 21, drawn to products wherein

R1 and R2 are each independently chosen from hydrogen atoms, and alkyl,

alkenyl, alkynyl, cycloalkyl, cycloalkylalkyl, cycloalkylalkenyl,

cycloalkylalkynyl, cycloalkenyl, cycloalkenylalkyl, cycloalkenylalkenyl,

cycloalkenylalkynyl, heterocyclyl, heterocyclylalkyl, heterocyclylalkenyl,

heterocyclylalkynyl, aryl, arylalkyl, arylalkenyl, arylalkynyl, heteroaryl,

heteroarylalkyl, heteroarylalkenyl, and heteroarylalkynyl groups;

., R5 is

heteroaryl, L is CONRc.

Group XIII, claim(s) 1-10, 20 and 21, drawn to products wherein

R1 and R2 are each independently chosen from hydrogen atoms, and alkyl,

alkenyl, alkynyl, cycloalkyl, cycloalkylalkyl, cycloalkylalkenyl,

cycloalkylalkynyl, cycloalkenyl, cycloalkenylalkyl, cycloalkenylalkenyl,

cycloalkenylalkynyl, heterocyclyl, heterocyclylalkyl, heterocyclylalkenyl,

heterocyclylalkynyl, aryl, arylalkyl, arylalkenyl, arylalkynyl, heteroaryl,

heteroarylalkyl, heteroarylalkenyl, and heteroarylalkynyl groups;

., R5 is

heteroaryl, L is OCONRc.

Group XIV, claim(s) 1-10, 20 and 21, drawn to products wherein

R1 and R2 are each independently chosen from hydrogen atoms, and alkyl,

alkenyl, alkynyl, cycloalkyl, cycloalkylalkyl, cycloalkylalkenyl,

cycloalkylalkynyl, cycloalkenyl, cycloalkenylalkyl, cycloalkenylalkenyl,

cycloalkenylalkynyl, heterocyclyl, heterocyclylalkyl, heterocyclylalkenyl,

heterocyclylalkynyl, aryl, arylalkyl, arylalkenyl, arylalkynyl, heteroaryl,

heteroarylalkyl, heteroarylalkenyl, and heteroarylalkynyl groups;

., R5 is

heteroaryl, L is NRcCOO.

Group XV, claim(s) 1-10, 20 and 21, drawn to products wherein

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- or R1 and R2 form, together with the nitrogen atom to which they are attached, either a 3- to 14- membered monocyclic or polycyclic heterocyclic ring system or a 5- to 14- membered heteroaryl group; .., R5 is aryl, L is bond.

Group XVI, claim(s) 1-10, 20 and 21, drawn to products wherein

- or R1 and R2 form, together with the nitrogen atom to which they are attached, either a 3- to 14- membered monocyclic or polycyclic heterocyclic ring system or a 5- to 14- membered heteroaryl group; .., R5 is aryl, L is NRc.

Group XVII, claim(s) 1-10, 20 and 21, drawn to products wherein

- or R1 and R2 form, together with the nitrogen atom to which they are attached, either a 3- to 14- membered monocyclic or polycyclic heterocyclic ring system or a 5- to 14- membered heteroaryl group; .., R5 is aryl, L is O.

Group XVIII, claim(s) 1-10, 20 and 21, drawn to products wherein

- or R1 and R2 form, together with the nitrogen atom to which they are attached, either a 3- to 14- membered monocyclic or polycyclic heterocyclic ring system or a 5- to 14- membered heteroaryl group; .., R5 is aryl, L is NRcCO.

Group XIX, claim(s) 1-10, 20 and 21, drawn to products wherein

- or R1 and R2 form, together with the nitrogen atom to which they are attached, either a 3- to 14- membered monocyclic or polycyclic heterocyclic ring system or a 5- to 14- membered heteroaryl group; .., R5 is aryl, L is CONRc.



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Group XX, claim(s) 1-10, 20 and 21, drawn to products wherein

- or R1 and R2 form, together with the nitrogen atom to which they are attached, either a 3- to 14- membered monocyclic or polycyclic heterocyclic ring system or a 5- to 14- membered heteroaryl group;

., R5 is aryl,

L is OCONRc.

Group XXI, claim(s) 1-10, 20 and 21, drawn to products wherein

- or R1 and R2 form, together with the nitrogen atom to which they are attached, either a 3- to 14- membered monocyclic or polycyclic heterocyclic ring system or a 5- to 14- membered heteroaryl group;

., R5 is aryl,

L is NRcCOO.

Group XXII, claim(s) 1-10, 20 and 21, drawn to products wherein.,

- or R1 and R2 form, together with the nitrogen atom to which they are attached, either a 3- to 14- membered monocyclic or polycyclic heterocyclic ring system or a 5- to 14- membered heteroaryl group;

R5 is

heteroaryl, L is bond.

Group XXIII, claim(s) 1-10, 20 and 21, drawn to products

- or R1 and R2 form, together with the nitrogen atom to which they are attached, either a 3- to 14- membered monocyclic or polycyclic heterocyclic

wherein ring system or a 5- to 14- membered heteroaryl group;

.,

R5 is heteroaryl, L is NRc.

GroupXXIV, claim(s) 1-10, 20 and 21, drawn to products

- or R1 and R2 form, together with the nitrogen atom to which they are attached, either a 3- to 14- membered monocyclic or polycyclic heterocyclic

wherein ring system or a 5- to 14- membered heteroaryl group;

.,

R5 is heteroaryl, L is O.

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Group XXV, claim(s) 1-10, 20 and 21, drawn to products

- or R1 and R2 form, together with the nitrogen atom to which they are attached, either a 3- to 14- membered monocyclic or polycyclic heterocyclic

wherein ring system or a 5- to 14- membered heteroaryl group;

R5 is heteroaryl, L is NRcCO.

Group XXVI, claim(s) 1-10, 20 and 21, drawn to products

- or R1 and R2 form, together with the nitrogen atom to which they are attached, either a 3- to 14- membered monocyclic or polycyclic heterocyclic

wherein ring system or a 5- to 14- membered heteroaryl group;

R5 is heteroaryl, L is CONRc.

Group XXVII, claim(s) 1-10, 20 and 21, drawn to products

- or R1 and R2 form, together with the nitrogen atom to which they are attached, either a 3- to 14- membered monocyclic or polycyclic heterocyclic

wherein ring system or a 5- to 14- membered heteroaryl group;

R5 is heteroaryl, L is OCONRc.

Group XXVIII, claim(s) 1-10, 20 and 21, drawn to products

- or R1 and R2 form, together with the nitrogen atom to which they are attached, either a 3- to 14- membered monocyclic or polycyclic heterocyclic

wherein ring system or a 5- to 14- membered heteroaryl group;

R5 is heteroaryl, L is NRcCOO.

Group XXIX, claim(s) 11-15 drawn to process of making products of Group I.

Group XXX, claim(s) 11-15 drawn to process of making products of Group II.

Group XXXI, claim(s) 11-15 drawn to process of making products of Group III.

Group XXXII, claim(s) 11-15 drawn to process of making products of Group IV.

Group XXXIII, claim(s) 11-15 drawn to process of making products of Group V.

Group XXXIV, claim(s) 11-15 drawn to process of making products of Group VI

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Group XXXV, claim(s) 11-15 drawn to process of making products of Group VII.

Group XXXVI, claim(s) 11-15 drawn to process of making products of Group VIII.

Group XXXVII, claim(s) 11-15 drawn to process of making products of Group IX.

Group XXXVIII, claim(s) 11-15 drawn to process of making products of Group X.

Group XXXIX, claim(s) 11-15 drawn to process of making products of Group XI.

Group XXXX, claim(s) 11-15 drawn to process of making products of Group XII.

Group XXXXI, claim(s) 11-15 drawn to process of making products of Group XIII.

Group XXXXII, claim(s) 11-15 drawn to process of making products of Group XIV.

Group XXXXIII, claim(s) 11-15 drawn to process of making products of Group XV.

Group XXXXIV, claim(s) 11-15 drawn to process of making products of Group XVI.

Group XXXXV, claim(s) 11-15 drawn to process of making products of Group XVII.

Group XXXXVI, claim(s) 11-15 drawn to process of making products of Group XVIII.

Group XXXXVII, claim(s) 11-15 drawn to process of making products of Group XIX.

Group XXXXVIII, claim(s) 11-15 drawn to process of making products of Group XX.

Group XXXXIX, claim(s) 11-15 drawn to process of making products of Group XXI.

Group L, claim(s) 11-15 drawn to process of making products of Group XXII.

Group LI, claim(s) 11-15 drawn to process of making products of Group XXIII.

Group LII, claim(s) 11-15 drawn to process of making products of Group XXIV.

Group LIII, claim(s) 11-15 drawn to process of making products of Group XXV.

Group LIV, claim(s) 11-15 drawn to process of making products of Group XXVI.

Group LV, claim(s) 11-15 drawn to process of making products of Group XXVII.

Group LVI, claim(s) 11-15 drawn to process of making products of Group XXVIII.

Group LVII, claim(s) 22-25 drawn to process of using products of Group I.

Group LVIII, claim(s) 22-25 drawn to process of using products of Group II.

Group LIX, claim(s) 22-25 drawn to process of using products of Group III.

Group LX, claim(s) 22-25 drawn to process of using products of Group IV.

Group LXI claim(s) 22-25 drawn to process of using products of Group V.

Group LXII, claim(s) 22-25 drawn to process of using products of Group VI.

Group LXIII, claim(s) 22-25 drawn to process of making products of Group VII.

Group LXIV, claim(s) 22-25 drawn to process of making products of Group VII.

Group LXV, claim(s) 22-25 drawn to process of making products of Group VIII.

Group LVII, claim(s) 22-25 drawn to process of making products of Group IX.

Group LVIII, claim(s) 22-25 drawn to process of making products of Group X.

Group LIX, claim(s) 22-25 drawn to process of making products of Group XI.

Group LX, claim(s) 22-25 drawn to process of making products of Group XII.

Group LXI, claim(s) 22-25 drawn to process of making products of Group XIII.

Group LXII, claim(s) 22-25 drawn to process of making products of Group XIV.

Group LXIII, claim(s) 22-25 drawn to process of making products of Group XV.

Group LXIV, claim(s) 22-25 drawn to process of making products of Group XVI.

Group LXV, claim(s) 22-25 drawn to process of making products of Group XVII.

Group LXVI, claim(s) 22-25 drawn to process of making products of Group XVIII.

Group LXVII, claim(s) 22-25 drawn to process of making products of Group XIX.

Group LXVIII, claim(s) 22-25 drawn to process of making products of Group XX.

Group LXIX, claim(s) 22-25 drawn to process of making products of Group XXI.

Group LXX, claim(s) 22-25 drawn to process of making products of Group XXII.

Group LXXI, claim(s) 22-25 drawn to process of making products of Group XXIII.

Group LXXII, claim(s) 22-25 drawn to process of making products of Group XXIV.

Group LXXIII, claim(s) 22-25 drawn to process of making products of Group XXV.

Group LXXIV, claim(s) 22-25 drawn to process of making products of Group XXVI.

Group LXXV, claim(s) 22-25 drawn to process of making products of Group XXVII.

Group LXXVI, claim(s) 22-25 drawn to process of making products of Group XXVIII.

2. The groups of inventions listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the claimed compounds do not share a core structure which is novel and non-obvious over the prior art.

3. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

See examples in the specification.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise require all the limitations of an allowed generic claim. Currently, the following claim(s) are generic: all claims.

#### 4. REQUIREMENT FOR UNITY OF INVENTION

As provided in 37 CFR 1.475(a), a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in a national stage application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim. See 37 CFR 1.475(e).

#### WHEN CLAIMS ARE DIRECTED TO MULTIPLE CATEGORIES OF INVENTIONS

As provided in 37 CFR 1.475(b), a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

- (1) A product and a process specially adapted for the manufacture of said product; or
- (2) A product and process of use of said product; or
- (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or
- (4) A process and an apparatus or means specifically designed for carrying out the said process; or
- (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.

Otherwise, unity of invention might not be present. See 37 CFR 1.475(c).

5. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement,

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the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention or species.

Should applicant traverse on the ground that the inventions have unity of invention (37 CFR 1.475(a)), applicant must provide reasons in support thereof. Applicant may submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. Where such evidence or admission is provided by applicant, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder.



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All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUN JAE LOEWE whose telephone number is (571)272-9074. The examiner can normally be reached on M-F 7:30-5:00 Est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Kosar can be reached on (571)272-0913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sun Jae Y Loewe/  
Primary Examiner, Art Unit 1622